

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RICHARD L. BYRD,

Plaintiff

Vs.

MEDIA CREATIONS, INC.

Defendant.

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CIVIL ACTION

FILE NO.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Richard L. Byrd brings this Complaint against Defendant Media Creations, Inc., alleging Copyright Infringement and breach of contract, showing this Court as follows:

Nature of Action

1. Plaintiff Richard Byrd seeks injunctive relief and damages for copyright infringement and breach of contract by Defendants under the laws of the United States and the State of Georgia.

Parties

2. Richard Byrd is a resident of Georgia.

3. Defendant Media Creations, Inc. is a Florida corporation with its principal place of business located at 7915 W. McNab Road, Tamarac, FL 33321.

Jurisdiction and Venue

4. This action arises under the Copyright Act of 1976 (17 U.S.C. § 101 et seq.), as well as Georgia common law.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) and the principles of supplemental jurisdiction.

6. The venue of this action is properly laid in the Northern District of Georgia pursuant to 28 U.S.C. § 1391(b)(2) and the Georgia Long-Arm Statutes.

7. This Court has personal jurisdiction over the Defendants pursuant to the Georgia Long-Arm Statute, O.C.G.A § 9-10-91(3), because the Defendant has committed a tortious act outside of Georgia that has caused harm within this jurisdiction, and regularly does or solicits business in this state.

Allegations Common to all Claims for Relief

8. Plaintiff is an author, having written and published several novels, including *Looking for Sweet Love* and *Black Coffee*.

9. In 2010, Plaintiff registered his copyright for *Looking for Sweet Love* with the United States Copyright Office, Registration No. TXu001660286.

10. Subsequently, in 2012, Plaintiff registered *Black Coffee* with the United States Copyright Office, Registration No. TXu001798468.

11. Plaintiff entered into a publishing agreement with Llumina Press, an imprint of Media Creations, Inc. to publish *Looking for Sweet Love* and *Black Coffee*. A true and correct copy of the publishing agreement is attached hereto as Exhibit “A.”

12. Plaintiff subsequently had disputes with Defendant over accountings and royalty payments required under the publishing agreement.

13. Pursuant to the express terms of the publishing agreement, Plaintiff, through his counsel, gave written termination of the publishing agreement by letter to Ms. Deborah Greenspan.

14. Despite proper termination of the agreement, Defendants have continued to sell, or offer for sale, both *Looking for Sweet Love* and *Black Coffee*.

Count I

Federal Copyright Infringement

15. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

16. This Count arises under the Copyright Act of 1976, Title 17 United States Code § 101 *et seq.*

17. *Looking for Sweet Love* and *Black Coffee* are both wholly original works, and constitute copyrightable subject matter under the Copyright Act, 17 U.S.C. § 101 *et seq.*

18. Plaintiff has complied in all respects with the laws covering copyright and have secured the exclusive rights and privileges in and to the copyrights to *Looking for Sweet Love* and *Black Coffee*.

19. Defendant has infringed and threatens to further infringe Plaintiff's copyrights in *Looking for Sweet Love* and *Black Coffee* by the marketing, sale, and distribution of the Infringing Works in this District and throughout the United States.

20. Defendant willfully infringed Plaintiff's copyrights in *Looking for Sweet Love* and *Black Coffee*.

21. Plaintiffs lack adequate remedy at law and are suffering irreparable harm and damage as a result of the aforesaid acts of Defendant in an amount not yet determined or ascertainable.

22. Upon information and belief, Defendant have obtained and are about to obtain gains, profits and advantages as a result of their wrongful acts in an amount not yet determined.

23. Plaintiff is therefore entitled to:

(a) A preliminary and permanent injunction preventing the distribution, marketing, release, sale or rental of *Looking for Sweet Love* and *Black Coffee* by Defendant;

(b) The recall of all copies of *Looking for Sweet Love* and *Black Coffee* sold or otherwise distributed by Defendant after the termination;

(c) The impoundment of all copies of *Looking for Sweet Love* and *Black Coffee* in Defendant's possession, custody or control; and

(d) All profits received by Defendants from the distribution, marketing, release, sale and rental of *Looking for Sweet Love* and *Black Coffee* after the termination;

(e) All consequential damages suffered by Plaintiffs; or

(f) Statutory damages for willful infringement in the amount of \$150,000 per work; and

(g) Plaintiffs' expenses of litigation, including reasonable attorneys' fees.

Count II

Breach of Contract

24. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 14 above, as if fully set forth herein.

25. Plaintiff and Defendant entered into a contract for publication and sale of Plaintiff's novels.

26. This contract expressly states that it is for a three year term with additional one year extensions so long as "neither party gives at least thirty (30) days written notice that it desires to terminate this license."

27. The contract also contains the following paragraph:

AUTHOR CANCELLATION

AUTHOR has the right at any time to cancel this agreement with thirty (30) days written notice to the PUBLISHER. All monies received by PUBLISHER will be refunded at the end of the thirty day period less the cost of work already done at the time notification is received. PUBLISHER is entitled to charge for such work at a rate of \$50 per hour. Publisher's personal time is billed at a rate of \$100 per hour.

28. Plaintiff gave the required notice of termination, cancelling the agreement as expressly provided in the contract.

29. Despite this termination, Defendants have continued to sell, and offer to sell, both *Looking for Sweet Love* and *Black Coffee*.

30. These continued sales after termination constitute a breach of contract.

31. Additionally, Defendant has failed to provide any accounting or royalties for sales after the termination, which is also a breach of the contract.

32. Plaintiff is therefore entitled to a judgment against Defendant for breach of contract in an amount to be proven at trial.

Count III

Expenses of Litigation

33. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 32 above, as if fully set forth herein.

34. Defendants has acted in bad faith, been stubbornly litigious and/or caused Plaintiff unnecessary trouble and expense, entitling Plaintiff to recover his expenses of litigation, including their reasonable attorneys' fees, pursuant to O.C.G.A. § 13-6-11.

WHEREFORE Plaintiffs respectfully pray for the following relief:

A. An Order preliminarily and permanently enjoining and restraining Defendant and those in active concert or participation with them from:

1. Further infringing Plaintiff's copyrights or manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying or otherwise disposing of any products not authorized by Plaintiffs which infringe on Plaintiffs' copyrights; and
2. Secreting, destroying, altering, removing or otherwise dealing with the unauthorized products or books or records which contain any information relating to the creation, production,

distribution, circulation, sale, rental, offering for sale, advertising, promoting or displaying the infringing works and any related products and merchandise.

B. Directing that Defendant recall all copies of the infringing works and all related products and merchandise distributed throughout the United States and the World pursuant to 17 U.S.C. § 503;

C. Directing that an accounting and judgment be rendered against Defendants for:

1. All profits received by Defendant from the sale or distribution of the infringing works and all related products and merchandise, as provided for by 17 U.S.C. § 504(b);
2. All damages suffered by Plaintiffs as a result of Defendant's copyright infringement, as provided for by 17 U.S.C. § 504(b); and
3. Statutory damages against Defendant in the amount of \$150,000 for the willful infringement of each copyrighted work infringed, as provided for in 17 U.S.C. § 504(c)(2), if such amounts are greater than the amounts of items (a) and (b) above;

D. Ordering that Plaintiffs recover the costs of this action together with reasonable attorneys' fees and investigators' fees and prejudgment interest in accordance with 17 U.S.C. § 505 and O.C.G.A. § 13-6-11;

E. Directing that the Court retain jurisdiction of this action for the purpose of enabling Plaintiffs to apply to the Court any time for such further orders and directions as may be necessary or appropriate for the interpretation or execution of any order entered in this action, for the modification of any such order, for the enforcement or compliance therewith and for the punishment of any violations thereof;

F. Entering a judgment in favor of Plaintiff and against Defendant for breach of contract in an amount to be proven at trial; and

G. Awarding to Plaintiffs such other and further relief as the Court may deem just and proper, together with the costs and disbursements which Plaintiffs has incurred with this action.

TRIAL BY JURY

Plaintiffs request a trial by jury on all issues so triable.

Respectfully submitted, this 12th day of June, 2014.

s/Thomas J. Mihill
Thomas J. Mihill
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Rule 7.1(D) Certification

This is to hereby certify that the **Complaint** was prepared in 14-point Times New Roman font.

s/Thomas J. Mihill
Thomas J. Mihill
Georgia Bar Number: 001363
CANNON, MIHILL & WINKLES